

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. WOODEN,

Petitioner,

v.

CIV. NO. 2:11-CV-287
CR. NO. 2:09-CR-0081
Judge Frost
Magistrate Judge King

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On June 1, 2011, the United States Magistrate Judge recommended that Petitioner's motion for summary judgment be denied and that Respondent be ordered to show cause why Petitioner's petition to vacate under 28 U.S.C. §2255 should not be granted. *Report and Recommendation*, Doc. No. 57. Petitioner has filed objections to that recommendation. *Objection*, Doc. No. 59; *Objection*, Doc. No. 60. The Court will consider the matter *de novo*.

Petitioner argues that he is entitled to summary judgment as a matter of law because of Respondent's failure to timely respond to the petition as ordered by this Court; Petitioner argues that the United States Constitution requires this Court to grant his motion. For the reasons discussed by the Magistrate Judge, this Court is not persuaded by Petitioner's arguments.

Petitioner's objections, Doc. Nos. 59, 60, are **DENIED**. The *Report and Recommendation*, Doc. No. 57, is **ADOPTED** and **AFFIRMED**. Petitioner's motion for summary judgment, Doc. 56, is **DENIED**.

Respondent is **ORDERED** to show cause, within twenty-one (21) days, why Petitioner's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 should not be granted.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge